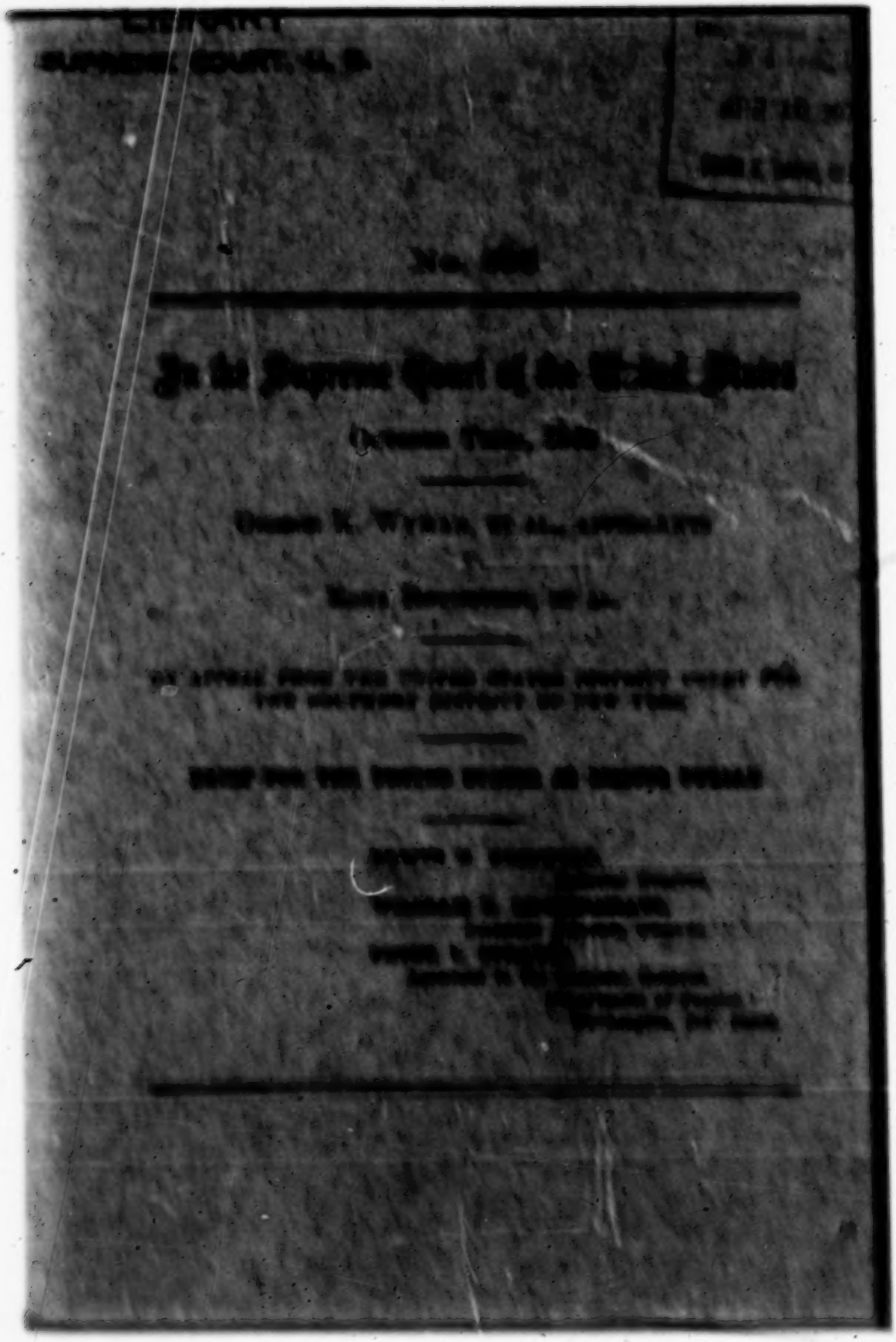

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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 896

GEORGE K. WYMAN, ET AL., APPELLANTS

v.

EDNA ROTHSTEIN, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

As in *King* v. *Smith*, 392 U.S. 309, this case presents both constitutional and statutory challenges to a provision of a state public assistance program which is funded by the federal government under the Social Security Act. The case was decided below on constitutional issues. As in *King*, however, the statutory ground remains an alternative basis for decision. Cf. *Rosado* v. *Wyman*, No. 540, this Term, slip op. p. 3, decided April 6, 1970; *Dandridge* v. *Williams*, No. 131, this Term, slip op. p. 4, n. 6, decided April 6, 1970. While—again as in *King*—the district court has not

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ruled on the statutory questions, preferring to await administrative action, the correctness of that postponement has now been cast in serious doubt. *Rosado, supra,* slip op. pp. 3, 7–8. We submit this brief to inform the Court of the view of the Department of Health, Education, and Welfare regarding the conformity of the challenged New York practice to the requirements of federal law, and of the statutory and regulatory basis for that view.

QUESTION PRESENTED

Whether the New York state plan of public assistance conforms to the federal standard requiring uniform, statewide administration of the plan, or improperly favors residents of New York City over residents of other areas of the state.

STATEMENT

Appellees receive aid to the aged, blind, or disabled (AABD) or aid to families with dependent children (AFDC) under the Federal-State public assistance programs established pursuant to Titles Sixteen and Four-A of the Social Security Act, 42 U.S.C. 1381 *et seq.*, 601 *et seq.* Appellees reside in Nassau County and Westchester County, New York. Under the New York Social Services Law, Sections 131 *et seq.*, and regulations promulgated thereunder by the New York Department of Social Services, they receive lower payments than similarly situated recipients who reside in New York City.

Prior to the recent adoption of Section 131–a of the New York Social Services Law, the New York statute did not prescribe schedules of payments. The New

York Department of Social Services determined the standards of need, recognizing basic needs for all eligible individuals, including certain items of food, clothing, and utilities. The State was divided into three zones for welfare allowance purposes as follows (statistics for family of four as of 1968, excluding rent and fuel):

SA–1 (New York City, Dutchess, Greene, Monroe, Nassau, Suffolk, Ulster and Westchester Counties)	$152–221
SA–2 (All counties not in SA–1 or SA–3)	149–218
SA–3 (Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Steuben and Wyoming Counties)	146–215

These $3-per-family differences turned on local variations in the average cost of utilities. The variation within each region depended on the age of the oldest child in each family. Rent and fuel for heating were provided separately to each individual or family as needed. In addition, a number of "special need" items were recognized for those individuals or families found to need them.

Section 131–a (N.Y. Laws of 1969, ch. 184) was enacted on March 31, 1969. It established two schedules of maximum flat monthly grants of public assistance (exclusive of shelter and fuel for heating) allowable to recipients, one applicable to New York City and the other applicable to all other social service districts in New York State, as follows:

	Number of persons in household							
	1	2	3	4	5	6	7	Each additional
New York City	70	116	162	208	254	297	340	43
Outside New York City	60	101	142	183	224	257	290	33

As subsequently amended (N.Y. Laws of 1969, ch. 411), Section 131-a permits the State Commissioner to raise or lower this statutory schedule, for all districts except New York City, upon a showing that the cost of the items in the schedule warrants the change. Thus, Section 131-a has a five-fold effect: (1) it provides statutory maximums; (2) it provides a single amount for the basic needs of families of a given size, other than shelter and fuel for heating, and does away with the differentials based on the age of the oldest child; (3) it eliminates the former provision for items of "special need";[1] (4) it sets a fixed level of benefits for New York City; and (5) it sets a uniform lower level of benefits for all other areas of the state, which may be reduced or increased (up to the New York City level) on the basis of the cost of the items included in the schedule.

Under this authority, the New York agency has promulgated the following schedules for a family of four:

SA-1 (New York City)	$208
SA-2 (Dutchess, Greene, Monroe, Nassau, Suffolk, Ulster and Westchester Counties)	191
SA-3 (All Counties not in SA-2 or SA-4)	188
SA-4 (Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Steuben and Wyoming Counties)	185

Since the statutory "maximum" for New York City is $208 and for all other districts, $183, this action has reduced the difference between the counties involved

[1] The discontinuance of these special need items in the AFDC program was found to be contrary to the provisions of Section 402(a)(23) of the Social Security Act, 42 U.S.C. 602(a)(23), in *Rosado*, *supra*.

in the present case (schedule SA–2; $191) and New York City ($208) by approximately one third.

After these schedules were adopted, the Regional Commissioner of the Department of Health, Education, and Welfare's Social and Rehabilitation Service wrote appellant Wyman, questioning whether they are consistent with the requirement of the federal statute that federally funded plans be statewide in application, with any variations in payments based on actual differences in the local costs of the items included in the state's standard of need. See the Appendix, *infra*. After pointing out the Commissioner's reasons for questioning the schedules' differentials, the letter concluded:

> In summary, the State standard must represent items of need to be made available to all recipients statewide. Differences in money amounts, if they exist, must result from demonstrable differences in the cost of these items in various sections of the State. Given the materials submitted to date, we are unable to find that there is in effect a statewide standard being uniformly applied throughout the State. We will, of course, give full consideration to any other information or comments which you may wish to submit.
>
> We would appreciate as prompt a response as possible, whether in the form of a written reply or by way of a meeting with your staff.

The State agency has not responded in writing, and staff discussions have not yielded any acceptable

showing to support the difference in the New York schedules for the various localities.[2]

Appellees, who were not and could not have been parties to these negotiations, brought this action in the United States District Court for the Southern District of New York, challenging Section 131–a both as a denial of equal protection and as in conflict with the "statewide standard" requirement of the Social Security Act and the Department's regulations. A three-judge court was convened, and granted preliminary injunctive relief to appellees enjoining the state from promulgating schedules of grants and allowances of public assistance, and from making payments of such assistance, except according to objective, non-discriminatory standards based upon the cost of a recipient's needs. This relief was granted on the constitutional ground. Although the court indicated that Section 131–a was itself sound, it found on the basis of the record before it that the schedules adopted under it were in probable violation of the Equal Protection Clause. In view of that determination, and in order to permit further interpretation of the applicable rules by the Department in the pending proceedings, the court declined to pass upon the conformity

[2] Although bills were introduced in the New York Legislature to establish a uniformly applicable statewide standard of assistance, the Legislature has recently amended Section 131–a, effective April 1, 1970, to retain separate schedules for New York City and for the rest of the State; the "maximum" figures are set about 10% higher. No change has been made in that part of section 131–a which permits the State agency to promulgate a lower or a higher amount (up to the New York City level) for districts other than New York City, on the basis of the cost of the items included in the schedule.

question "at this stage." (J.S. App. 19a.) It intimated its view, however, that that question would be resolved in the same way as the constitutional issue—against the validity of the state schedules.

ARGUMENT

NEW YORK'S SCHEDULES OF ALLOWANCES FOR NEED ARE CONTRARY TO THE SOCIAL SECURITY ACT AND THE APPLICABLE FEDERAL REGULATIONS IN THE ABSENCE OF A SHOWING THAT THE DIFFERENTIALS BETWEEN DISTRICTS REASONABLY CORRESPOND TO ACTUAL DIFFERENCES IN THE COST OF THE ITEMS CONSIDERED IN DETERMINING NEED

The conformity issue in this case arises substantially out of the obligation of states participating in plans under the Social Security Act to provide for *statewide* operation of the plans. Thus, a participating state's plan must be in operation in every political subdivision of the state, and if administered by the subdivisions, must be mandatory upon them. 42 U.S.C. 602(a)(1), 1382(a)(1). There must be a single state agency to administer or supervise the plan. 42 U.S.C. 602(a)(3), 1382(a)(3).

One aspect of a plan is the standard of need. The Social Security Act public assistance programs provide for financial assistance to "needy" individuals and families. 42 U.S.C. 606(a), 1385(a). While the states have, in general, "undisputed power to set the level of benefits and the standard of need," *King, supra,* 392 U.S. at 334, they are obliged to create such a standard, sometimes also referred to as the "standard of assistance" or the "assistance budget." *Rosado,* slip op. 10. The requirement is not explicit in the

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Act (but cf. 42 U.S.C. (Supp. IV) 602(a)(23)), but has been required by federal regulations since the Act was enacted. 45 C.F.R. 233.20(a) (34 Fed. Reg. 1394 (1969)).[3] One could hardly describe who are "needy" individuals for purposes of State eligibility and Federal matching unless there were a standard of need. Similarly, the State plan requirement that the State agency shall, in determining need, take into consideration any other income and resources of the claimant, 42 U.S.C. 602(a)(7), 1382(a)(14), could not be carried out rationally without a standard of need against which the income and resources could be considered.

From the requirement of a statewide plan, it follows that the standard of need, required as part of that plan, must also be statewide. In addition, it must be "objective and equitable."[4] 45 C.F.R. 233.20(a)(1). The federal agency has consistently taken the view that the several provisions of the public assistance

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[3] The Department is in the process of changing from its former practice of reliance on regulations published in its Handbook of Public Assistance Administration to publication in the Federal Register. Although only recently published in the Federal Register, the underlying principles and many of the specific provisions have long been reflected in the Handbook.

[4] Since the principle of equitable treatment, in this case, is derived in part from the statutory scheme and its purposes, it has a wider sweep than constitutional requirements of due process and equal protection, standing alone. Compare *Dandridge* v. *Williams*, *supra*, slip op. pp. 12–15. Constitutional principles of reasonable classification must in any event be met; but the statutory principle may also exclude differences in treatment of individuals which may not be so invidious as to offend the constitutional bar. For example, in this case the claim of invidiousness is not that Section 131-a of the New York Statute made an improper classification, but that the administrator, in adopting regulations (the

titles of the Social Security Act, in combination, require that a state plan provide for equitable treatment of individuals assisted under it.[5] Thus, federal regulations require as a general proposition that State public assistance plans must provide that the determination of need and the amount of assistance for all applicants and recipients will be made on an objective and equitable basis. 45 C.F.R. 233.20(a)(1). The state plan must specify a statewide standard, expressed in money amounts, to be used in determining the need of applicants and recipients and the amount of the assistance payment. 45 C.F.R. 233.20(a)(2)(i). The plan must further provide that the standard will be uniformly applied throughout the state. 45 C.F.R. 233.20(a)(2)(iii). The plan must include the method to be used in determining need, which must be either a method recommended by the Department or a com-

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schedules), failed to apply it in an objective and equitable manner, leading to an invidious result. It may be more difficult in these circumstances to find the regulations unconstitutional than to conclude that—by failing properly to apply a correct, established standard—their adoption did not meet the test of equitable treatment.

[5] In addition to the provisions discussed above in the text, at least the following statutory requirements also support this conclusion:

Any person wishing to apply for assistance under a plan must be given the chance to do so and, if eligible, must be furnished assistance with reasonable speed. 42 U.S.C. 602(a)(10), 1382(a)(8).

Any person whose claim for assistance is denied or whose application is not acted upon promptly must be granted an opportunity for a fair hearing. 42 U.S.C. 602(a)(4), 1382(a)(4).

Methods of administration adopted must assure proper and efficient operation of the plan. 42 U.S.C. (Supp. IV) 602(a)(5)(A), 1382(a)(5)(A).

parable method which is approved by it. 45 C.F.R. 233.20(a)(2)(iv). Finally, if the state includes special need items in its standard, it must describe those that will be recognized and the circumstances under which they will be included, and it must provide that they will be considered in the need determination for all applicants and recipients requiring them. 45 C.F.R. 233.20(a)(2)(v).

The Department's recommended methods for ascertaining need are contained in a booklet entitled "Simplified Methods for Determining Needs," copies of which are being lodged herewith. The first paragraph of the text in the body of this pamphlet states:

> Although several methods of presenting cost standards for workers to use are available to States, the method chosen must be statewide in its application. It is strongly recommended that, if at all feasible, identical cost standards also be used statewide. Any variation in cost standards by areas within a State must be justified by facts.

Similarly, the Handbook of Public Assistance Administration, IV 3120, which is still applicable as an interpretation of the regulations, states:

> The money amount may vary with difference in cost objectively determined to exist within the State.

It is thus clear that, for those items which are not treated on an individualized basis,[6] there must be a

[6] Under the "Simplified Methods for Determining Needs" the states are encouraged to have a single figure for all basic requirements, which include clothing, electricity, food, fuel, household

statewide amount for the standard of need, except insofar as differences are supported by a showing of cost differentials in the various areas of the state. As reflected in the Department's letter raising the conformity issue (App. *infra*), and as the court below found (J.S. App. 3a–8a, 13a–16a), New York has not shown that the differences in allowances under its various schedules result from demonstrable differences in the cost of the included items in the various sections of the state. Thus, the district court noted, the only relevant cost data before the state legislature when it enacted Section 131-a supported equal treatment, rather than different treatment, for New York City and its suburban counties (J.S. App. 5a); no subsequent studies had been made, no administrative recommendation had been made, and the state Commissioner, appellant here, "frankly stated that he did not know why the Legislature differentiated * * *" (J.S. App. 6a). The Department "had no evidence or study supporting" the assumptions regarding higher costs of living in the City proper on which it based its arguments below and which it repeats here (J.S. App. 7a). Plaintiffs, on the other hand, introduced extensive evidence tending to show equivalence, at least, in costs (*ibid.*). In sum, the court concluded,

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equipment, household supplies, medicine-chest supplies, personal incidentals, phone, school costs, shelter, transportation, and water. However, states may state shelter separately on an individualized basis and may also state any special needs separately. New York at present treats shelter and fuel for heating on an individualized basis.

> There is not a scintilla of evidence that the difference between the level of the schedules prescribed by the Legislature for New York City and for its surrounding counties, respectively, could be justified on the basis of a difference in cost of the essential items forming the basis of those levels. Indeed, the evidence before us is clear and undisputed that the cost of those essential items was the same for New York city as for the seven surrounding counties. [J.S. App. 13a]. * * *

These circumstances are sufficient to justify the district court's conclusion, in the proceedings for a preliminary injunction, that the plaintiffs would probably succeed in showing that the state had not complied with the requirements of the federal regulations, 45 C.F.R. 233.20(a)(1)–(2), and the underlying provisions of the Social Security Act.[1] The relief

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[1] Since appellees are seeking to enforce the *federal* standards and the present state schedules are not in conformity with those standards, we do not believe appellant's exhaustion of remedies argument is apt. In any event, the statute upon which appellants rely, App. Br. 17–22, seems to confer no right on welfare beneficiaries to initiate or appear in the state administrative procedures by which the schedules may be changed. Cf. *Rosado*, *supra*, slip op. p. 8.

Rosado, of course, makes it clear that it would be improper to require appellees to wait upon conclusion of the federal-state negotiations for resolution of the conformity issue they have raised. *Ibid.* As this Court intimated, the practical consequences of the Secretary's initiating action to cut off funds are so extreme that even the threat of such an action cannot be made lightly; he believes such pressures are not to be exerted except as a last resort. In view of the negotiations which must precede them, and the delays made inevitable by the multitude of state plan amendments and administrative matters which must be considered each year, speedy resolution of such issues within the federal administrative process is not to be expected.

granted neither precludes the state from making such showings nor interferes with the proper operation of the state statute; it precludes enforcement of Section 131–a and the schedules under it only to the extent that those are "other than according to objective, non-discriminatory standards based upon the cost of the needs of such recipients" (J.S. App. 20a).[8] As we have shown, only in such circumstances could it be in conformity with the federal act.

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[8] While this Court held in *Rosado*, slip op. 23, that the appropriate relief would be to afford the state the opportunity for prompt compliance or else compulsory loss of federal funds, we assume it did not repudiate the possibility of simple invalidation of offending state laws or regulations—the relief afforded in *King*, *supra*—where the circumstances permit. Offending rules frequently will be severable from the plan as a whole, and their financial consequences slight. Most states, like New York, have express statutory provisions indicating that the administrator of a federally funded public assistance program is to do whatever may be necessary to comply with the federal standards—including, in some cases, the invalidation of conflicting state rules. See Ala. Code 55–180(1), (2); Ariz. Rev. Stat. 46–311; Ark. Stat. 83–109(9), –109(17), –128.2; Cal. Welfare and Inst. Code 11003; Colo. Rev. Stat. 16–2–3(1)(e), 101–1–2(4), 119–3–1, –6–4(5), –9–2(1)(e); sec. 16, ch. 43, Sess. Laws Colo. 1968; Conn. Gen. Stat. 17–11; Del. Code 31–522(2),(6), 2308; Fla. Stat. 409.045(11); Ga. Code 99–2915; Hawaii Rev. Stat. 20–346–29, –346–52, –346–53, –347–5; Idaho Code 56–203(b); Ill. Code 23–12–4.5; Ind. Code 52–1113, –1113a; Ia. Code 234.6.2; Kansas Stat. 39–708; La. Rev. Stat. 46:52(6); Me. Rev. Stat. 22–10; Md. Code 88A–68(d); Mass. Gen. Laws 18–10, 800–10; Mich. Stat. 16.410; Minn. Stat. 256.01(5); Miss. Code 7174(e), 7238, 7252; Mo. Stat. 207.020(6); Mont. Rev. Code 71–204, –205, –403, –503(f), –602(f); Nev. Rev. Stat. 422.260; N.H. Rev. Stat. 126A–34, 167–24; N.J. Stat. 44:7–42, –45, 44:8–111(b), 44:10–3; N. Mex. Stat. 13–1–43, –28.7; N.Y. Social Welfare Law 320(1), 358(1), 363–a(1); N.C. Gen. Stat. 108–4(6); N.D. Code 50–24–02.1; Ohio Rev. Code 5101.51, 5103.07, 5105.11, 5106.08, 5107.02; Okla. Stat.

CONCLUSION

The judgment of the three-judge district court should be affirmed, and the case remanded for appropriate further proceedings.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

WILLIAM D. RUCKELSHAUS,
Assistant Attorney General.

PETER L. STRAUSS,
Assistant to the Solicitor General.

APRIL 1970.

56:177; Ore. Rev. Stat. 413.230; Pa. Stat. 62–201, –410, –451, –501; R.I. Gen. Laws 40–9–26; S.C. Code 71–12; S.D. Code 55–3802(5); Tenn. Code 814–206; Vernon's Ann. Civ. Stat. (Tex.), Art. 695c, sec. 4(12); Utah Code 55–15–10(2), –11(2), –23, 63–35–8; Vt. Stat. 33–2504; Va. Code 63.1–98; Wash., Laws of 1970, ch. 18–66; W. Va. Code 9–5–6a; Wisc. Stat. 3–16.54, 6–46.206; Wyo. Stat. 42–38(2),(3), –65, –70(e),(f) (The District of Columbia, Alaska, and Nebraska appear to lack such provisions). These directives are given with varying degrees of specificity, and in some circumstances are restricted to state regulations or orders rather than statutes in their operation. Even apart from this Court's holding in *King*, 392 U.S. at 333 and n. 34 (see also *Bossier Parish School Board* v. *Lemon*, 370 F.2d 847 (C.A. 5); *Shepheard* v. *Godwin*, 280 F. Supp. 869, 875 (E.D.Va.); *United States* v. *Frazer*, 297 F. Supp. 319, 322–323 (M.D.Ala.)), the existence of such a directive, where applicable, plainly warrants relief in the form of a declaration that an offending state rule is invalid and cannot be enforced. In such a case, the intermediate step of directing the non-payment of federal funds unless there were compliance would not be required.

APPENDIX

NOVEMBER 10, 1969.

Re: Submittal No. S–33–69

Mr. GEORGE K. WYMAN,
Commissioner,
New York State Department of Social Services,
1450 Western Avenue,
Albany, New York 12203

DEAR MR. WYMAN: The schedules of monthly grants and allowances set forth in the above raise a question as to whether there is provision in the New York State plan for use of a Statewide standard in determining need and payments with any variation in amounts for localities based on local differences in the cost of the items in the standard. (P.R. 20–7).

In this regard, we do not question that section 131–a(4) of the Social Services law would authorize a method of operation which is consistent with statewideness requirements. However, there must be assurance that in implementing such provision, you will undertake to maintain the proper relationship to local costs and to exercise your power to promulgate revised schedules in any case in which you determine such revision is called for, i.e., that such action is not dependent on a request or application therefor by local authorities.

The regulations which you have promulgated establish four schedules of monthly grants and allowances as opposed to the former three schedules. The additional schedule results from splitting districts which were previously included in one class; New York City is now treated separately from the counties of Dutchess, Greene, Monroe, Nassau, Suffolk, Ulster and Westchester. Grants in the latter counties will now be

approximately $4.50 lower per person than in New York City. The fact that all these counties were previously classed together with New York City would itself constitute some evidence that you have previously found the cost of the items contained in the standard to be virtually the same in all these areas, and would therefore indicate the need for specific supporting data as to the basis for this particular differentiation.

In addition, analysis of the schedules as against the pre-added monthly allowances previously payable to families in which the oldest child was ten or eleven shows a much higher increase for New York City than for any other district. In this connection, it is noted that while the previous difference between SA–1 and SA–3 schedules for the highest and lowest cost districts amounted usually to between $6. and $8. in comparable family units, the difference now ranges from $15. in a 2-person family to $39. in a family of seven. Also, while the previous schedules provided a uniform figure of $32. for additional persons, the new schedules provide $43. in New York City and $37. in every other district.

In your letter of June 2, 1969, you indicate that the differentiation between New York City and the rest of the State is based upon "its size and complexity, resulting in special requirements for transportation to use available services." It is difficult to understand how transportation costs could account for the differentiation in grant levels. Moreover, such differentiation does not appear to be supported by the most recent information (Autumn 1968) from the Bureau of Labor Statistics on living costs within the State, e.g., such costs in Buffalo as compared to New York City.

In summary, the State standard must represent items of need to be made available to all recipients statewide. Differences in money amounts, if they exist, must result from demonstrable differences in the cost of these items in various sections of the State. Given the materials submitted to date, we are unable to find that there is in effect a statewide standard being uniformly applied throughout the State. We will, of course, give full consideration to any other information or comments which you may wish to submit.

We would appreciate as prompt a response as possible, whether in the form of a written reply or by way of a meeting with your staff.

Sincerely yours,

JAMES CALLISON,
Regional Commissioner.

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